

(S E R V E D)
(JULY 14, 1987)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503

[Docket No. 87-8]

FILING OF COMMENTS PERTAINING TO AGENCY MEETINGS

AGENCY: Federal Maritime Commission

ACTION: Final Rule

SUMMARY: The Federal Maritime Commission amends its Rules of Practice and Procedure and its rules implementing the Government in the Sunshine Act to establish a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at an agency meeting. The language and structure of section 502.2 (46 CFR 502.2) is also clarified.

DATE: Effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking
Secretary
Federal Maritime Commission
1100 L Street, N.W., Rm. 11101
Washington, D.C. 20573-0001
(202) 523-5725

SUPPLEMENTARY INFORMATION:

By publication in the Federal Register on April 15, 1987, (52 FR 12212) the Federal Maritime Commission ("FMC" or "Commission") invited comments on a "Notice of Proposed Rulemaking" ("Notice") which proposed to amend section 503.82 of Title 46 CFR by establishing a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at a Commission meeting. The Notice also proposed an amendment to section 502.2 of Title 46 CFR to provide an appropriate cross-reference to the amendment in section 503.82 and indicated that the current language and structure of section 502.2 would be clarified.

The reason for the proposed rule is to provide for a more orderly and thorough consideration of information pertaining to a particular matter before the Commission by prohibiting filings after the date of the public announcement of an agency meeting. Last minute filings on such matters may not allow the Commission sufficient time to properly review the additional information prior to its consideration of the item at the Commission meeting. Such filings also unfairly preclude any opportunity for response by another interested party where one may be warranted.

The only comment received was filed by the Transpacific Westbound Rate Agreement ("TWRA"). TWRA believes that the proposal "goes far beyond 'clarify[ing] the language and structure of section 502.2'", and could have "potentially serious consequences." (TWRA Comments at 1.) TWRA states that while the existing rule relates only to matters involving a formal

proceeding or a formal filing subject to Part 502, the proposed rule would require filing with the Secretary, FMC of any matter "likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part." (TWRA Comments at 2.) This promises to create problems, according to TWRA, which sees the rule as: (1) impermissibly vague as to what documents it applies to; (2) impinging impermissibly on constitutionally protected rights of shippers, carriers, ports, members of the public, legislators, foreign and U.S. officials to communicate through written or oral communication; and (3) unduly insulating the Commissioners from the maritime world and making the Commissioners unduly dependent upon staff for information necessary for background, for policy making or the taking of new initiatives.

As indicated in the Supplementary Information of the proposed rule, the Commission intended no substantive amendment to section 502.2 other than the addition of paragraph (d). Specifically there was no intention to enlarge the rule to preclude contact with Commissioners on matters not yet before the Commission. This will be clarified in the final rule by reinserting the qualifier "pending before the Commission" so that section 502.2(c) reads, in part, "or to any matter pending before the Commission which is likely to come before the Commissioners for decision. . . ."

The Commission did, however, seek to make clear that the existing requirement for filing with the Secretary as opposed to individual Commissioners extends not only to matters relating to

proceedings governed by Part 502 but to other matters pending before the Commission for decision as well. That paragraph (b) of existing section 502.2 applies to other than Part 502 matters is supported by its general reference to "matters pending before the Commission." It is also evidenced by the fact that paragraph (b) was not originally included in Part 502, but rather was published as a more general Statement of Policy appearing at 46 CFR 530.16(a) (47 FR 14709, April 6, 1982). The language in question was only recently incorporated into section 502.2 on April 23, 1984 (49 FR 16994), as part of the general restructuring of Commission rules occasioned by the implementation of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701-1720.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or
- (3) Significant adverse effects on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic

impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this rule because the amendments to Parts 502 and 503 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Parts 502, 503:

Administrative Practice and Procedure, Sunshine Act

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716(a), Parts 502 and 503 of Title 46, Code of Federal Regulations, are amended as follows:

1. The Authority Citation for Part 502 continues to read as follows:

AUTHORITY: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707-1711, 1713-1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.2 is amended by adding a new paragraph (d) and clarifying the language in this section so that the section, in its entirety, reads as follows:

§ 502.2 Filing of documents; hours; mailing address

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to "Secretary, Federal Maritime Commission, Washington, D.C. 20573-0001."

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter pending before the Commission which is likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this Part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See section 503.82(e) of this chapter.) [Rule 2.]

3. The Authority Citation for Part 503 continues to read as follows:

AUTHORITY: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167

4. Section 503.82 is amended by adding a new paragraph (e) to read as follows:

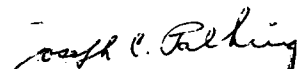
§ 503.82 Public announcement of agency meetings.

* * * * *

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

* * * * *

By the Commission.


Joseph C. Polking
Secretary